

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
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Washington D.C. 20002
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

EZEANI EDITH O. NWOSU
Respondent

Case Nos.: I-00-40141
I-00-40151

FINAL ORDER

I. Introduction

On May 12, 2000, the Government served a Notice of Infraction (No. 00-40141) charging Respondent Ezeani Edith O. Nwosu with violating D.C. Code § 2-3305.1 by practicing dietetics without a license. The Notice of Infraction sought a fine of \$500.00 for the violation.¹

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Code § 6-2715). Accordingly, on June 9, 2000, this administrative court issued an order finding Respondent in default and assessing the statutory penalty of \$500.00 required by D.C. Code § 6-2712(f).

¹ This case originally was docketed in this administrative court with Rock Creek Manor as an additional named Respondent. In response to this administrative court's order of August 17, 2000, the Government stated that it did not intend to proceed against Rock Creek Manor, and it has been dropped from this case.

The Government then served a second Notice of Infraction (00-40151) on the Respondent on June 27, 2000. Respondent also did not answer the second Notice within twenty days of service. Accordingly, on August 4, 2000, this administrative court issued a Final Notice of Default, finding Respondent in default on the second Notice of Infraction and assessing total penalties of \$1,000.00 pursuant to D.C. Code § 6-2712(f). The Final Notice of Default also set September 6, 2000 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at the hearing to contest liability, fines, penalties or fees. Enclosed with the Final Notice of Default were copies of both the first and the second Notice of Infraction.

Prior to the September 6, 2000 hearing, the Government submitted several exhibits in support of the Notices of Infraction. Six of those exhibits were offered and received into evidence at the hearing. Petitioner's Exhibits ("PX") 101 – 106. The inspector who issued the Notices of Infraction also appeared for hearing and testified. Respondent did not appear at the hearing, nor did she submit any evidence.

II. Findings of Fact

Based upon the testimony of the inspector, which I find to be credible, the exhibits submitted by the Government and the entire record in this case, I make the following findings:

1. Respondent Nwosu is not currently licensed to practice dietetics in the District of Columbia. Ms. Nwosu received a license to practice as a nutritionist in the

District of Columbia on June 14, 1989. PX-100. That license expired on November 1, 1993 and was not renewed. PX-101.²

2. In late February or early March 2000, Ms. Nwosu was hired by Rock Creek Manor as a clinical dietician. Rock Creek Manor is located at 2131 O Street, N.W. in the District of Columbia. The job description for her position (PX-103) states that a license as a dietician is a minimum qualification for the position. On February 29, 2000, Ms. Nwosu signed a copy of the job description, representing that she “fully understood” all of its conditions. PX 103 at 3. Ms. Nwosu left the employ of Rock Creek Manor in late April or early May 2000.
3. During her tenure at Rock Creek Manor, Ms. Nwosu evaluated the nutritional needs of individual residents and made recommendations for their diets. She also approved the facility’s menus. PX 104-105
4. During her tenure at Rock Creek Manor, Ms. Nwosu signed menus and nutritional assessments using the suffix “RD/LD,” which stands for “Registered Dietician/Licensed Dietician.” PX 104-105.
5. The Notices of Infraction in this matter were served on Respondent on May 12, 2000 and June 27, 2000, as evidenced by the certificates of service signed by the Government’s representative. The address used was 1508 Rainbow Drive, Silver

² The statutory requirements for a nutritionist’s license are similar, but not identical, to the requirements for a dietician’s license. The major difference between the two is that dieticians and nutritionists must pass different examinations. D.C. Code §§ 2-3307.1(a)(2); 2-3307.1(c)(2). The applicable regulations also prescribe slightly different experience requirements for each type of license. *Compare* 17 DCMR 4402.2 (requirements for a dietician’s license) *with* 17 DCMR 4502.4 (requirements for a nutritionist’s license). A licensed dietician may use the title “nutritionist,” but a licensed nutritionist may not call herself a “dietician.” D.C. Code § 2-3307.1(b).

Spring, Md. 20905, the address that Ms. Nwosu had used on her application for employment with Rock Creek Manor. PX 103.

6. This administrative court's June 9, 2000 default order and its August 4, 2000 final notice of default, which set the date for the *ex parte* hearing, were mailed to Respondent at the Silver Spring address.
7. Respondent has offered no explanation for her failure to answer the Notices of Infraction.

III. Conclusions of Law

1. Respondent Nwosu had adequate notice of the charges against her as mandated both by the Due Process Clause and by the applicable statute. Service of the Notices of Infraction by mail to Respondent's last known address is sufficient notice. *See Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).
2. The Health Occupations Revision Act of 1985, D.C. Code § 2-3305.1, requires all persons practicing dietetics in the District of Columbia to be licensed to do so. "Practice of dietetics and nutrition" is defined as:

"the application of scientific principles and food management techniques to assess the dietary or nutritional needs of individuals and groups, make recommendations for short-term and long-term dietary or nutritional practices which foster good health, provide diet or nutrition counseling and develop and manage nutritionally sound dietary plans and nutrition care systems consistent with the available resources of the patient or client." D.C. Code § 2-3301.2(6).

3. The evidence establishes that Ms. Nwosu practiced dietetics without a license in violation of § 2-3305.1. By signing her job description, she recognized that a dietitian's license was necessary to do the work for which she was hired. Signing the menus and nutritional assessments as a licensed dietitian also demonstrates that she knew that a license was necessary to perform her duties. Moreover, the nutritional assessments included in PX 105 show that she assessed the dietary needs of various residents of Rock Creek Manor and made recommendations concerning their diets. Those activities fall within the definition of "practice of dietetics and nutrition" quoted above.
4. For violating D.C. Code § 2-3305.1, Ms. Nwosu must pay a civil fine of \$500.00.
16 DCMR 3212.1(k).
5. Ms. Nwosu failed to answer both the first and the second Notice of Infraction without demonstrating sufficient cause for those failures, and therefore is liable for statutory penalties of \$1,000.00 in addition to the civil fine prescribed for her violation. *See* D.C. Code §§ 6-2704(a)(2)(A) and 6-2704(a)(2)(B).

IV. Order

Based upon the foregoing findings of fact, the conclusions of law and the entire record in this case, it is hereby, this _____ day of _____, 2001:

ORDERED, that Respondent shall cause to be remitted a single payment totaling **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15)

calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

/s/ 2/17/01

John P. Dean
Administrative Judge